

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EFREN ANGUIANO-MAGANA,

3:11-cv-00131-PK

Petitioner,

ORDER

v.

STEVE FRANKE,

Respondent.

MARSH, Judge

Magistrate Judge Paul Papak issued his Findings and Recommendation on November 14, 2012, recommending that petitioner's habeas petition be dismissed as untimely, and that his request for an evidentiary hearing be denied. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). No objections have been timely filed.

When neither party objects to a Magistrate Judge's Findings and Recommendation, this court is relieved of its obligation to review the record *de novo*. United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*); see also United States v. Bernhardt, 840 F.2d 1441, 1444 (9th Cir. 1988). Having reviewed

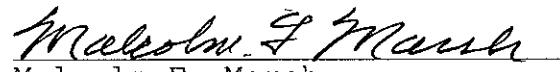
the legal principles *de novo*, I find no error, with the exception that I correct the Findings and Recommendation at page 5 to reflect that the Oregon Court of Appeals affirmed petitioner's conviction on October 13, 2004, and the appellate judgment issued on December 15, 2004. The limitation period began to run on December 15, 2004, not January 20, 2005. See Or. R. App. Proc. 14.05(3)(a) (appellate judgment does not enter for a period of 35 days after decision to allow time for petition for review). With that correction, I adopt the Findings and Recommendation.

CONCLUSION

Based on the foregoing, I ADOPT Magistrate Judge Papak's Finding and Recommendation (#35), as corrected. IT IS ORDERED that petitioner's petition for writ of habeas corpus (#2) is DENIED as untimely, and this proceeding is DISMISSED, with prejudice. Because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is DENIED. See 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 12 day of December, 2012.


Malcolm F. Marsh
United States District Judge